

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-D-840-2022 (O&M)
Reserved on: 05.12.2023
Date of decision: 16.12.2023

SHEELA DEVI

...Appellant

Versus

STATE OF HARYANA

...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Parminder Walia, Advocate
for the appellant.

Mr. Pradeep Prakash Chahar, Sr. DAG, Haryana

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict made on 02.08.2022, upon Sessions Case No.CIS (NDPS Case) No.103 of 2018, by the learned Additional Sessions Judge, Kurukshetra, wherethrough he convicted the accused for a charge drawn qua an offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as “the Act”). Moreover, through a sentencing order of even date, he proceeded to impose upon the convict sentence of rigorous imprisonment extending upto a period of 12 years, besides imposed upon her, sentence of fine of Rs.1,20,000/-, besides in default of payment of fine amount, he sentenced the convict to undergo simple imprisonment extending upto a period of two years.

2. The accused-convict became aggrieved from the above drawn verdict of conviction, and, also the consequent therewith sentence(s) (supra), as became imposed. Resultantly, she instituted thereagainst the instant appeal bearing No.CRA-D-840-2022.

FACTUAL BACKGROUND

3. The genesis of the prosecution case are that, on 05.07.2018, a police party headed by ASI Surjeet Singh was present on checking and patrolling duty at Mohan Nagar, Kurukshetra when he received a secret information that Sheela Devi, wife of Jangli, along with four other women namely Sarbati, Kunta, Salochna and Bimla were engaged in the business of selling Ganja and they will be receiving a consignment of 40 kg of Ganja from the co-accused Suraj Bhan in a street going towards Shorgir Basti from Ankur Nursing Home and if an immediate raid is conducted, the aforesaid accused can be apprehended along-with the said contraband. Notice under Section 42 of the NDPS was prepared and was sent to Shri Raj Singh, Deputy Superintendent of Police (Headquarters), Kurukshetra through C. Naveen Kumar, and a lady constable was called from Women Police Station, Kurukshetra on which HC Pammi Devi reached the spot. The police party found five women standing in the street, near whom two heavy bags were kept. After seeing the police party, four women managed to flee away from the spot on account of less number of lady police officials whereas one woman was apprehended by LHC Pammi Devi, who disclosed her name as Sheela Devi wife of Jangli. A notice under Section 50 of NDPS Act was served upon her and she opted to get the aforesaid bags checked in front of a Gazetted Officer and as such, DSP (HQ), Kurukshetra was telephonically requested to come at the spot. The bags in possession of accused Sheela Devi were opened and checked, out of which black coloured substance, in the form of dried leaves, was recovered and the accused allegedly disclosed that it was Ganja. On weighing, the said bags were found to weigh 20 kg each. In other words, 40 kg of Ganja was recovered from the possession of accused Sheela Devi. Both the bags were sealed with two seals of SS each. Two sample impressions of SS were also affixed on a white cloth and the bags were marked A-1 and A-2. The seal

used by the investigating officer was handed over to HC Deepak Kumar. The DSP also appended his two seals of RS on each bag as well as on the sample seal impression sheet. The case property, along-with sample seal impressions, was taken into police custody and recovery memo was prepared.

4. Further investigation of the case was conducted by SI Subhash Chand, who prepared the rough site plan and arrested the accused under Section 52 of the NDPS Act. Thereafter, the accused, along with the case property, was produced before the concerned SHO who verified the facts from the accused as well as the witnesses. The SHO also appended his two seals of PK on each bag as well as on the sample seal impressions sheet and prepared the report under Section 55 of the NDPS Act. Disclosure statement of the accused Sheela Devi was recorded and she, along with the case property, was produced before the then learned Chief Judicial Magistrate, Kurukshetra, who got the said bags opened by breaking open the seal of SS. Thereafter, two samples of 100 grams were drawn from each bag, which were sealed by Ld. CJM with two seals of NS each. Two seals of NS were also affixed on the sample seal impressions sheet and also on the case property. Photographs of the same were taken into the Court room and the accused was sent to judicial remand. On 6.8.2018, the co-accused Suraj Bhan was arrested. On 9.7.2018, two samples containing two seals of NS each along with sample seal impression sheet containing two seals of SS, RS, PK and NS along with Form No.29 were deposited in FSL Madhuban by C. Joginder Singh. After the completion of investigation, challan/final report under Section 173, Cr.P.C., was presented to the learned trial Court.

Trial Court Proceedings

5. On completion of investigations, challan was filed in the learned trial Court against the accused. On her appearance before the learned trial Court,

she was charge sheeted for the commission of an offence punishable under Section 20 of the said Act. The said charge was read over and explained to the accused in simple Hindi, to which she pleaded not guilty and claimed trial. Subsequently after the recordings of depositions of 12 witnesses, the learned public prosecutor closed the prosecution evidence but after tendering the report of the FSL, to which Ex.P-8 is assigned. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, she led two witnesses in her defence evidence.

Submissions of learned counsel for the convict-appellant

6. (a) Learned counsel for the convict-appellant submits, before this Court that since the recovery, as become made at the crime site concerned, and, as carried in Ex.P7, when thus became made in pursuance to prior information. Consequently as required by Section 42 of the Act, the said prior information was required to be reduced into writing, and, was to be also thereafter transmitted to the superior officer concerned, whereas, with the above mandatory statutory provision, remaining uncomplied with. Therefore, it is argued that the charge drawn against the appellant rather remaining not cogently established.

(b) That since case property as revealed by destruction certificate Ex.P17, become destroyed. Therefore, when thereby the case property remained not produced, in Court nor when it became shown to the prosecution witnesses concerned, whereas, its production, in Court, but was imperative for thereby firmly establishing, that the apposite link inter-se the apposite recovery being made through recovery memo, and, its production in Court, thus becomes subserved. Therefore, for non-production of the case property, in Court, in the light of destruction certificate Ex.P17, thus the said link remains not cogently

established. Consequently, it is argued that the charge drawn against the convict-appellant rather remaining not cogently proven.

(c) Even though, recovery of the contraband was made from the plastic box Ex.P7, as mentioned in recovery memo. Though prima-facie thereby the recovered contraband, thus was evidently not tethered onto the body of the convict-appellant nor was carried in a bag slung on the shoulder of the convict-appellant. Therefore, though prima-facie for ensuring recovery thereof, from the conscious and exclusive possession of the accused, thus did not require compliance, being made to the provisions of Section 50 of the Act. Consequently, when neither any efficacious nor complete compliance became made to the provisions of Section 50 of the Act, thereby even the recovery, as, made of 40 kgs of Ganja, from the plastic bag lying near her, thus was an inefficacious recovery.

Submissions of the learned State counsel

7. Learned State counsel has argued that the impugned verdict of conviction, and, consequent thereto sentence (supra), as became imposed upon the convict by the learned trial Judge concerned, is meritworthy, as the same does not suffer from any taint of any gross mis-appreciation or non-appreciation of any evidence germane to the charge. Therefore, he contends that the impugned verdict of conviction be maintained, and, affirmed by this Court.

Analysis of the submissions of learned counsel for the convict-appellant and reasons for rejecting the same

8. Through Ex.P-7 recovery of Ganja was made from the bags, which were kept on the floor/ground of the crime site concerned. Therefore, thereby there was no requirement for the investigating officer concerned, to beget

compliance with the mandatory statutory provisions, as embodied in Section 50 of the Act.

9. A reading of the deposition of the investigating officer concerned, reveals that after recovery of the said contraband being made, thus thereons becoming embossed two seal impressions, carrying thereons English alphabets 'SS'. The said seals along with the seal impressions 'RS' thus became made on the seized contraband, rather at the crime site.

10. However, as further revealed by the deposition of the SHO, of the police station concerned, who stepped into the witness box as PW4, the latter after receiving the seized contraband, at the police station concerned, thus proceeded to emboss thereons two seal impressions 'PK'.

11. Furthermore, as revealed from a reading of the in-charge of the malkhana concerned, who stepped into the witness box as PW-6, the said seizure became deposited in the malkhana concerned, vide DD No.8, through Entry No.815, being made in register No.19. He has also categorically spelt in his deposition, that so long as it remained in his custody, thereupto the case property remained untampered. Subsequently, as deposed by PW-1, the case property became sent through Constable Joginder Singh to the FSL concerned. During the course of his carrying the case property to the FSL concerned, no material emerges, thus exemplifying qua thereons any tampering being made.

12. A reading of the report of the FSL concerned, as becomes enclosed in Ex.P8, contents whereof are extracted hereinafter, thus vividly reveals, that two sealed cloth parcels became received there thus through Constable Joginder Singh. The above made narrations in the report of the FSL concerned, do completely tally with the speakings, as made by the prosecution witnesses concerned, both in respect of the numbers of the seal impressions, as became

made on the seizure, besides also tally with the English alphabets, as became embossed thereons. Therefore, but obviously it has to be concluded, that the enclosed residue in cloth parcels, which became removed from the bulk, for examinations thereons being made, by the FSL concerned, becoming completely related or being compatible, to the numbers of the seal impression, as made thereons, besides with the English alphabets, as became embossed thereon.

Xxx

Description of Parcel and condition of seals.

Two sealed cloth parcels. The seals were intact and tallied with the specimen seal as per Forwarding Authority’s letter.

Description of article contained in parcel.

Parcel No.	No. & seal impression	Description of article /sample
1 & 2	2-NS On each	Sample marked here as -N-855/18 (1&2) Physical appearance -Greenish brown vegetative material having Flowering/fruiting tops and Seeds (1&2) Weight of sample received – 100 g. each (1&2)

Analytical Techniques Applied:-

Colour tests, Microscopic and TLC.

Observations:-

- A- The tests were positive for the presence of Tetrahydrocannabinol, Cannabinol and Cannabidiol in the samples (1 & 2).
- B- Characteristics trichomes of Ganja were present in the samples (1 & 2).
- C- The tests were positive for the presence of Ganja in the samples (1& 2).

Opinion:- The samples (1 & 2) were identified as **GANJA**

xxx

Sd/- 3/8/18 KIRAN KUMAR
Assistant Director (NDPS)
Forensic Science Laboratory
Haryana, Madhuban (Karnal) ”

13. Even no contest became raised by the learned counsel defence that the FSL report Ex.P8, thus was not made in respect of contents enclosed in the sealed cloth parcels (supra), nor any contest became raised by the learned

defence counsel, that the thereons embossed number(s) of seal impressions, besides the embossed thereons, thus English alphabets, rather not tallying either with the number(s) of the seal impressions or with the English alphabets, as became embossed thereons, and, as became depicted in the road certificate. In consequence, any argument as becomes raised before this Court by the learned counsel for the convict-appellant, that the report of FSL (supra), as made on the stuff retrieved, from the sealed cloth parcels, rather not relating to the residue enclosed therein, after separating the same from the bulk, thus after seizure thereof being made at the crime site, rather is a pretextually raised argument before this Court. In consequence, the same warrants its rejection, and, is rejected as such.

14. In addition, whatsoever argument is raised before this Court, by the learned counsel for the convict-appellant, that the report, as became made by the FSL concerned, on the sealed cloth parcels, thus is not related to the stuff inside them, and, as became purportedly separated from the bulk, at the crime site, but necessarily is also a pretextual argument.

15. Importantly, the result of the apposite examinations, as becomes extracted hereinabove, makes vivid echoing that after examinations of the stuff, as was enveloped in the sealed cloth parcels, thus such examinations unfolding, that thereins became enclosed remains of Ganja. Conspicuously, the report of the FSL concerned, also recites that after examination of the stuff inside the sealed cloth parcels, the said examined stuff, became re-enclosed in sealed cloth parcels, and, thereons became affixed seals of the FSL concerned.

16. The said above recitals, as occur in the report of the FSL concerned, also do not become contested by the learned counsel. The sequel of no contest being raised to the above recitals, is that, the learned defence counsel, neither

asking nor was required to be given any opportunity, thus for production of the cloth parcel enclosing therein, the stuff examined by the FSL concerned, and, in respect whereof an affirmative opinion was made.

17. The effect of the above opportunity neither being asked nor being granted to the learned defence counsel, during the course of cross-examination, of the prosecution witnesses concerned, is naturally that, the above opportunity has been waived or abandoned by the learned defence counsel. In consequence, the further effect thereof, is that, the presumption of truth as attachable through attracting theretos, the mandate existing in Section 292 of the Cr.P.C., does thereby rather acquire conclusivity. Therefore, for non-production of the parcel containing the residue, as became separated from the bulk, at the crime site, rather before the learned trial Court concerned, does not yet snap the link, inter-se the residue becoming separated from the bulk, at the time of recovery of the contraband, being made at the crime site, vis-à-vis, the production of the said residue, which after its examination became re-enclosed in a cloth parcel by the FSL concerned.

18. The reason being that when the defence for reasons (supra), acquiesces, to the residue traveling in an untampered, and, unspoiled condition to the FSL concerned, besides when it also acquiesces to the conclusivity of the opinion, as, made thereons by the FSL concerned, thus reiteratedly for want of the defence, rather asking for production, in Court, hence of the parcel containing the residue, as became separated from the bulk at the crime site, especially, at the time of the adduction into evidence of the report (supra) of the FSL concerned. Resultantly, thereby the report of the FSL concerned, acquires conclusivity, irrespective of non-production, in Court, vis-à-vis relevant sample cloth parcels, whereons, became affixed the uncontested seal impressions of the FSL after the latter re-enclosing therein, the stuff examined at the FSL.

19. In other words, the report of the FSL concerned, in the above event of acquiescence of the defence, to its conclusivity, thus stems, a conclusion that rather the report of the FSL concerned, comprising prima-facie primary evidence against the convict-appellant. Furthermore, since the destruction of the bulk as well as of the residue was made by a team of senior police officials. Therefore, to the unchallenged destruction report Ex.P17, as prepared by a team of senior police officers, but also relieves the prosecution, from ensuring the production of the case property, before the learned trial Judge concerned, nor thereby the relevant link as arising from the recovery of the case property at the crime site, and, its production in Court, becomes snapped.

20. Learned counsel for the convict-appellant has also submitted, that since it was a chance recovery, and, thereby the investigating officer concerned, was required to, in terms of Section 42 of the Act, provisions whereof become extracted hereinafter, thus draw the reasons to believe, and, to thereafter transmit, the said scribed reasons to believe, to the superior officer, whereas, he has omitted to do so, thereby the mandatory statutory provisions as contained under Section 42 of the Act, becoming evidently not complied, as such, the appellant is entitled to a verdict of acquittal.

“[42. Power of entry, search, seizure and arrest without warrant or authorisation.-- (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe

from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,-

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building,

conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.]”

21. The said argument becomes repelled, on the ground that a reading of Ex.P-11, which is a report of drawn under Section 42 of the Act, thus makes vivid disclosures, that the investigating officer concerned, has therein elucidated, the factum of his receiving prior information, besides has scribed therein the reasons for his believing, that the present appellant is handling contraband. Moreover, a reading of Annexure P-11 also discloses, that the same became transmitted to the DSP, Headquarters, Kurukshetra. Resultantly, thereby compliance became meted to the hereinabove extracted provisions, and, thereby the above made argument also looses its sheen.

22. Though, the learned counsel for the convict-appellant has argued, that though the seizure as became made at the crime site Ex.P-7, did not require compliance being meted, vis-à-vis, the provisions of Section 50 of the Act, as the convict-appellant, was neither carrying contraband slung on her shoulder nor had tethered the recovered contraband onto her body, but yet when consent notice under Section 50 of the Act Annexure P-13 became issued to her. Moreover, when there was breach of the mandate of Section 50 of the Act, therefore, contention is raised that the accused is entitled to a verdict of acquittal. However, when in pursuance thereof the present appellant purveyed a signed consent, to the search of the plastic bag lying on the ground, at the crime site concerned, rather being made in the presence of a gazetted officer. Moreover, when the DSP headquarters concerned, who is a gazetted officer rather was present, at the time of makings of searches of the bags, wherein, became

enclosed 40 kgs of Ganja. Consequently, even though no compliance was required to be made to the provisions of Section 50 of the Act, yet even if compliance thereto was made, the said compliance, thus conforms to the requirement envisaged under Section 50 of the Act, as the convict-appellant, made an uncontested signed consent, to the search of the plastic bags, thus being made in the presence of a gazetted officer of the police department, besides when the search of the plastic bag was made, as such, in the presence of a gazetted officer, whereafter the enclosed therein Ganja was recovered through Ex.P7. Therefore, even if the provisions of Section 50 of the Act became complied with, yet the compliance thereto, was thus made *stricto sensu* or was an absolute compliance to the provisions of Section 50 of the Act.

23. Lastly, and, most predominantly, during the course of custodial interrogation being made, upon the present appellant, she made an uncontested signed disclosure statement Ex.P16, before the police officer concerned, whereby she confessed her guilt in the commission of the charged offence. Therefore, when she has neither been able to ably deny her signatures, as, carried thereons, nor she has ably proven the said denial. Therefore, the said confession of guilt is not hit by Section 25 of the Indian Evidence Act, as prior thereto the recovery of the contraband was made through her uncontested signatures on Ex.P-7, exhibit whereof is the uncontested recovery memo. In consequence, thereby too, there was no necessity of production of the case property, in Court nor for non-production of the case property, in Court, the relevant link inter-se the recovery of the contraband being made at the crime site, with production theretos in Court, thus becomes snapped.

Final Order

24. In consequence, the impugned verdict of conviction, and, also the consequent thereto order of sentence, as becomes respectively recorded, and, imposed, upon the convict by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the appeal, and, the same is dismissed. If the appellant is on bail, thereupon she is ordered to be forthwith taken into custody, through the learned trial Judge concerned, forthwith drawing committal warrants against the accused. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

25. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

16.12.2023

Ithlesh

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No